

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Charleston Division**

**ALISHA KINGERY,
f/k/a ALISHA WILKES,
individually and on behalf of all
others similarly situated.**

Plaintiffs,

v.

Civil Action No. 2:12-cv-1353

QUICKEN LOANS, INC.,

Defendant.

**MEMORANDUM IN SUPPORT OF MOTION FOR CLARIFICATION
OF MAGISTRATE JUDGE'S ORDER GRANTING MOTION TO COMPEL**

Defendant Quicken Loans, Inc. (“Quicken Loans”), by counsel, submits this memorandum in support of its motion for clarification of the portion of the Magistrate Judge’s Order (ECF No. 183) (the “Order”), ordering counsel for Quicken Loans “to follow Fed. R. Civ. P. 30(c)(2) when objecting during future Rule 30(b)(6) depositions.”

ARGUMENT

On November 12, 2013, the Magistrate Judge issued his Order granting Plaintiff’s Motion to Compel in part. Under the Order, Quicken Loans must “designate one or more witnesses to testify at a Rule 30(b)(6) deposition, held at a location and time agreeable to the parties.” Order, p. 5. It also ordered counsel for Quicken Loans “to follow Fed. R. Civ. P. 30(c)(2) when objecting during future Rule 30(b)(6) depositions.” *Id.* Quicken Loans understands the Order to mean that it must follow Rule 30(c)(2) with respect to the Rule 30(b)(6) deposition ordered by the Court.

On November 13, 2013, counsel for Quicken Loans sent an email to Plaintiff's counsel regarding the Rule 30(b)(6) deposition ordered by the Court. *See Exhibit 1* (Nov. 13, 2013, at 9:45 a.m., from Mr. Lynch to Plaintiff's counsel). Quicken Loans' counsel requested that Plaintiff provide a Notice of Deposition so that Quicken Loans could identify the proper corporate representative(s) to testify at the deposition. He also proposed dates for a meet and confer relating to any objections to the Notice of Deposition that Quicken Loans may assert.

In response, Plaintiff's counsel stated that “[i]n light of the order, we believe all objections are now resolved in favor of Plaintiff.” *Id.* (Nov. 13 email from Mr. Lyngklip to Mr. Lynch). They further stated that the Order’s “Rule 30c2 comment and sentence was a warning to the Defendant to avoid the same conduct ‘in future Rule 30(b)(6) depositions,’ not this one.” *Id.* (Nov. 13 email from Mr. Bennett to Mr. Lynch). In other words, Plaintiff contends that the portion of the Order requiring Quicken Loans “to follow Fed. R. Civ. P. 30(c)(2) when objecting during future Rule 30(b)(6) depositions” applies to future *cases*, but not this case.

Out of abundance of caution, and to ensure that Quicken Loans follows the Order, Quicken Loans seeks clarification of the Order on this narrow issue, *i.e.*, whether the Order's statement regarding Fed. R. Civ. P. 30(c)(2) relates to this case or future cases. Under Plaintiff's interpretation of the Order, Quicken Loans is precluded *in this case* from seeking relief under Fed. R. Civ. P. 30(c)(2) based on the improper examination of Quicken Loans' corporate representatives at the upcoming deposition. For instance, Quicken Loans could not object to questions seeking disclosure of information protected by the attorney-client privilege, nor could it move to terminate or limit the deposition under Fed. R. Civ. P. 30(d)(3) due to unreasonable embarrassment of the witness. *See* Fed. R. Civ. P. 30(c)(2) (“A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the

court, or to present a motion under Rule 30(d)(3)."). Quicken Loans believes that Plaintiff misinterprets the Order in this regard, and that the Order's statement regarding Fed. R. Civ. P. 30(c)(2) relates to this case.

Quicken Loans respectfully requests that the Court enter an Order clarifying that Quicken Loans may assert its rights under Fed. R. Civ. P. 30(c)(2) during Rule 30(b)(6) depositions in this case, and granting such additional relief that the Court deems necessary.

Dated: November 21, 2013

Respectfully Submitted,

QUICKEN LOANS, INC.

By: /s/ John C. Lynch
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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